

JERRY S. BUSBY
Nevada Bar #001107
COOPER LEVENSON, P.A.
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
(702) 366-1125
FAX: (702) 366-1857
jbusby@cooperlevenson.com
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEBORAH RENKERT-DUE, an individual;

Case No.

Plaintiff,

VS.

SMITH'S FOOD & DRUGS CENTERS, INC.
d/b/a SMITH'S #358, an Ohio corporation;
DOES 1 through 10, ROE CORPORATIONS
11 through 20; and ABC LIMITED
LIABILITY COMPANIES 21 through 30,

Defendants.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-22-851666-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.

NOTICE OF REMOVAL IS TIMELY

1. On April 26, 2022, Plaintiff DEBORAH RENKERT-DUE, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about April 27, 2022. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The Complaint filed and served on SMITH'S merely alleged that "Plaintiff has been damaged by the negligence of Defendant, in an amount in excess of \$15,000.00." (Compl. at ¶16).

1 In addition, the Complaint alleged that “As a direct and proximate result of the acts of
 2 omissions of Defendant, Plaintiff was required to obtain medical services and treatment and
 3 may, in the future, be required to obtain additional medical services and treatment in an
 4 amount in excess of \$15,000.00.” (Compl. at ¶24).

5 4. Defense counsel learned that the value of this case was sufficient for Federal
 6 jurisdiction on June 2, 2022. On that date, Plaintiff filed and served a Request for Exemption from
 7 Arbitration in the pending State Court litigation. Therein, Plaintiff alleges she has incurred medical
 8 expenses in the amount of \$167,864.21. (Pl.’s Request at 7).

9 Upon receiving this information, Defense counsel learned that the “amount in controversy”
 10 exceeds the jurisdictional minimum for diversity jurisdiction.

11 5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

12 If the case stated by the initial pleading is not removable, a notice of
 13 removal may be filed within thirty days after receipt by the defendant,
 14 through service or otherwise, of a copy of an amended pleading,
 15 motion, order or other paper from which it may first be ascertained
 that the case is one which is or has become removable, except that a
 case may not be removed on the basis of jurisdiction conferred by
 section 1332 of this title more than 1 year after commencement of the
 action.

16
 17 6. The following pleadings have been entered and/or filed in State Court:

- 18 a. Plaintiff’s Complaint filed April 26, 2022;
- 19 b. Affidavit of Service of Summons and Complaint filed April 27, 2022;
- 20 c. SMITH’S Answer to Plaintiff’s Complaint filed May 17, 2022;
- 21 d. Plaintiff’s Request for Exemption from Arbitration was served on
 June 2, 2022; and
- 22 e. Commissioner’s Decision on Request for Exemption was served on
 June 15, 2022.

23
 24 7. Other than the pleadings discussed above, no further proceedings have taken place in
 25 District Court, Clark County, Nevada as of the filing of this notice of removal.

26 ///

27 ///

II.

DIVERSITY JURISDICTION EXISTS

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

A. The Amount in Controversy Requirement is Satisfied.

9. Plaintiff's Complaint merely alleged that "Plaintiff has been damaged by the negligence of Defendant, in an amount in excess of \$15,000.00." (Compl. at ¶16). In addition, the Complaint alleged that "As a direct and proximate result of the acts of omissions of Defendant, Plaintiff was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment in an amount in excess of \$15,000.00." (Compl. at ¶24).

10. In addition to the above, Plaintiff's Request for Exemption from Arbitration served on June 2, 2022 indicated that Plaintiff's medical expenses total \$167,864.21. (Pl.'s Request at 7).

B. The Parties Are Diverse.

11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada. (Compl. at ¶2) .

12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

III.

REMOVAL TO THIS JURISDICTION IS PROPER

13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of personal jurisdiction.

17. SMITH'S requests a trial by jury of all issues.

18. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark County, Nevada, where the action is currently pending.

Dated this 22nd day of June, 2022.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby
Jerry S. Busby
Nevada Bar No. 001107
3016 West Charleston Boulevard - #195
Las Vegas, Nevada 89102
Attorneys for Defendant
SMITH'S FOOD & DRUG CENTERS, INC.